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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950

No. 45

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., *Appellants,*

vs.

THE UNITED STATES OF AMERICA, ET AL.

No. 46

GALVESTON CHAMBER OF COMMERCE, ET AL., *Appellants,*

vs.

THE UNITED STATES OF AMERICA, ET AL.

No. 47

RAILROAD COMMISSION OF TEXAS, *Appellant.*

vs.

THE UNITED STATES OF AMERICA, ET AL.

No. 48

SAVANNAH SUGAR REFINING CORPORATION, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF OF AMERICAN BARGE LINE COMPANY, INLAND WATERWAYS CORPORATION AND MISSISSIPPI VALLEY BARGE LINE COMPANY, APPELLEES.

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OPINION BELOW

The opinion of the District Court for the Northern District of Illinois (R. 173) is reported in 88 F. Supp. 982. The reports of the Interstate Commerce Commission (R. 16, 75) appear in 270 I.C.C. 591, and 274 I.C.C. 229.

JURISDICTION

The final decree of the three-judge district court was entered on January 12, 1950 (R. 189). The petitions for appeal were presented and allowed on March 7, 1950 and March 10, 1950 (R. 190, 196, 198, 202, 203, 207, 208, 213). The jurisdiction of this Court is conferred by 28 U.S.C. 1253, 2101(b), and 2325. Probable jurisdiction was noted on May 15, 1950 (R. 460).

STATUTE INVOLVED

The relevant provisions of the Interstate Commerce Act and of the Inland Waterways Corporation Act, are set forth in the Appendix, *infra*, pp. 42-50.

QUESTIONS PRESENTED

The appellants charge that the Interstate Commerce Commission exceeded its authority and failed to conform to statutory standards in issuing an order prescribing through routes and joint rates differentially lower than corresponding all-rail rates for the trans-

portation of property in through barge-rail service. The questions presented are:

1. Have the appellants an interest which entitles them to maintain their suit?

2. Does the Commission's order show on its face that it is based on a mistaken view of congressional policy and not on the standards of lawfulness provided by the Interstate Commerce Act as applied to the evidence before it?

3. May the Commission prescribe differential rates for barge-rail service without first finding that the cost of barge-rail service is less than the cost of all-rail service?

4. Does the report contain all findings necessary to support the order?

STATEMENT.

These are direct appeals from the judgment of a three-judge district court denying an injunction to restrain enforcement of an order of the Interstate Commerce Commission entered in *Rail and Barge Joint Rates*, No. 26712 on the Commission's docket, and cases consolidated therewith. The Commission proceedings embraced further hearings in complaint cases brought by the Inland Waterways Corporation, appellee, and its predecessor the Secretary of War, seeking through routes and joint differential rates with railroad connections[1] (R. 20), three complaints brought by railroads including the appellants in No. 45 against the through route and differential joint rate adjustments prescribed by the Commission in various orders entered in proceedings under the Denison Act of May 3, 1928 (45 Stat. 978)[2] (R. 19-21), and a general inves-

[1] I.C.C. No. 13290, *U. S. War Department* v. *A. & S. Ry. Co.*, 77 I.C.C. 317, 92 I.C.C. 528; I.C.C. No. 18406, *Inland Waterways Corp.* v. *B., S. L. & W. Ry. Co.*, 142 I.C.C. 9; I.C.C. No. 19017, *Inland Waterways Corp.* v. *C. G. W. R.R. Co.*, 129 I.C.C. 521; and I.C.C. No. 19480, *Inland Waterways Corp.* v. *Alabama G. S. R. Co.*, 151 I.C.C. 126. Reports of the Commission entered in these cases on various dates in 1923, 1924, 1927, 1928 and 1929, provide the basis for a substantial portion of the existing barge-rail differential adjustment.

[2] The reports in the Denison Act proceedings are as follows: *Through Routes and Joint Rates, Ex Parte No. 96* (1929), 153 I.C.C. 129, (1929) 156 I.C.C. 141, (1930) 161 I.C.C. 207, (1930) 163 I.C.C. 716, (1930) 167 I.C.C. 385, (1931) 172 I.C.C. 525, (1931) 174 I.C.C. 477, (1932) 181 I.C.C. 675, (1933) 192 I.C.C. 173, and (1933) 192 I.C.C. 663; *Application of Mississippi Valley B. L. Co., Ex Parte No. 99*, (1930) 167 I.C.C. 41, (1930) 171 I.C.C. 37, (1931) 178 I.C.C. 224, (1932) 182 I.C.C. 512, and (1932) 183 I.C.C. 503; and *Application of American B. L. Co., Ex Parte No. 102*, (1932) 182 I.C.C. 521, and (1932) 185 I.C.C. 483.

tigation instituted by the Commission's order of October 8, 1934 (R. 78-80). The issues raised in the collective proceedings reached the reasonableness and lawfulness otherwise of the existing differential joint barge-rail[3] rates and also the question of the necessity and reasonableness of additional routes and joint differential barge-rail rates.

The order of the Commission entered after an original report July 7, 1948, (R. 16-74) and a supplemental report of June 13, 1949, (R. 75-77) required the appellants in No. 45 and other common carriers by railroads to join appellee barge lines in through routes and joint rates, the latter to be determined by deducting specific differentials from the all-rail rates in effect between the same points (R. 55-74).

The Commission's order largely required revisions of existing barge-rail through routes and differential joint rates, rather than completely new routes and rates. Some routes and differential rates were prescribed where none are now maintained.

The existing adjustment came into being at various times after 1918, partly by voluntary action of interested railroads and barge lines, partly in conformity with suggestions and findings of the Commission in the cases cited in footnote 1 above, and in part in compliance with orders entered in the Denison Act proceedings cited in footnote 2 above.

The three barge line appellees are Inland Waterways Corporation, operating Federal Barge Lines (Federal),

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[3] "Barge-rail" is used herein in the inclusive sense of covering all types of routes and differential rates prescribed, whether barge-rail, rail-barge, or rail-barge-rail.

American Barge Line Company (American), and Mississippi Valley Barge Line Company (Valley). These lines were respondents along with connecting rail lines in the Commission's general investigation, No. 26712. Collectively they operate barge services on the Mississippi River between the Twin Cities and New Orleans, on the Missouri River to Kansas City, on the Ohio River to Pittsburgh, and on the Warrior River system between New Orleans and Port Birmingham, Alabama. At various ports of interchange served by them these barge lines join with railroads in through routes and joint rates on a differential rate basis. They also conduct extensive port-to-port operations on a differential rate basis. The latter rates are not involved in these proceedings.

The proceedings and record before the Commission

Hearings in the Commission proceeding were had on various dates beginning in 1935, and extending to 1943. The record before the Commission includes more than 16,000 pages of transcript plus approximately 1,500 statistical exhibits. That part of the record was made in Exhibit No. 1 in the court below.[4]

In addition, annual reports to the Commission of the rail and the barge-line respondents in I.C.C. No. 26712, and the annual reports of Inland Waterways Corporation to the Secretary of War in the earlier years and to the Secretary of Commerce in later years were made a part of the Commission record by reference for the entire period up to the date of the Commission's decision.

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[4] By stipulation Exhibit No. 1 is not printed. It is a part of the record here as an original exhibit.

Although appellants complained in the court below that the order of the Commission is without support in the evidence (R. 13) they rely entirely on the face of the Commission's report to support that allegation (Brief, appellants in No. 45, p. 9). Under these circumstances there is no need for appellees to summarize or for the Court to examine the evidence before the Commission. It must be accepted as sufficient unless the face of the report clearly discloses a lack of evidence on a matter as to which evidence is required as a matter of law.

The face of the Commission's report discloses that in determining the differentials found justified and reasonable by it, it gave consideration among other things to evidence dealing with the following matters:

The history of the operations of the three barge-line appellees, their equipment, frequency of service, ports served, tonnages handled, commodities transported, relative importance of the traffic involved (that interchanged with railroads) to the non-involved port-to-port traffic,[5] and operating income or deficits realized (R. 20-24);

The history and scope of the existing differential joint barge-rail adjustment, the relation of the differentials in the joint rate structure under review to differentials in the port-to-port structure which was not in issue, the basis for the existing differentials, dif-

[5] In 1947, the tons handled on joint rates with railroads when compared with total tons handled by the barge-line appellees appeared as follows: For Federal, 369,217 out of 2,154,412 tons; for Valley, 37,000 out of 2,076,470 tons; for American, 3,084 out of 1,385,666 tons. In earlier years, the joint traffic with railroads represented a larger share of the total. (R. 22, 23, 24)

ferences between the ports served as to the relative extent of the barge-rail rate structure provided therefor, and the limitations imposed by the Commission in prior cases on barge-rail routes and differentials so as to avoid wasteful transportation (R. 24-31);

The willingness of the railroads to join in through routes with barge lines if the joint rates maintained thereover were established on the all-rail basis (R. 31);

Studies relating to cost of service by rail and by barge in the period 1933-38, the restatement of such cost studies and the conclusions reached in regard thereto by the Cost Section on the staff of the Commission, and the radical changes in conditions affecting such cost studies which have been experienced since the cost study periods (R. 32-3);

Statements in 1947 by the Inland Waterways Corporation, its President, and the Under Secretary of Commerce as to the existing condition of Federal's equipment, its increased cost of labor, lack of prospects for profitable operations unless the line be rehabilitated, and the program then under way as to new and modern equipment and more efficient and economical terminal handling (R. 33-35);

The rising terminal costs encountered by other barge lines and the reduction in 1947 compared with 1941 in the joint traffic with railroads handled by Valley as result of certain embargoes placed by that line against the joint traffic[5] (R. 35,36);

[5] In the Commission's report dated July 7, 1948, (R. 35) and in the brief filed by appellant in No. 47 in opposition to the motion to affirm reference is made to an embargo declared by Mississippi Valley Barge Line Company against the handling of

The interest of shippers in barge-rail transportation, the evidence showing that the Mississippi Valley has failed to progress normally in population and industry because of high transportation costs, the effect of the development and use of inland waterway transportation on the economic development of the Mississippi Valley, the influence of differential barge-rail rates lower than all-rail rates on the use of barge-rail service, the inferiority of barge-rail service to all-rail service in point of time and hazard which bears upon the value of service to shippers, the benefits of barge transportation to shippers in the Mississippi Valley who compete with shippers located on or near sea coasts (which latter shippers have available coastwise and intercoastal steamship service), and the savings in transportation expense to shippers from the use of barge transportation (R. 36-39);

The pioneering function with which the Congress has charged Federal[6a] (R. 42);

The railroads' insistence in the past on an inflexible application of the Ex Parte No. 96 formula, and the

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merchandise traffic in less-than-bargeload quantities. It is true that due to rising costs of labor, material and supplies since the decisions of the Commission in July, 1948, the Mississippi Valley Barge Line Company found it impossible to operate except at a substantial loss and that in order to abate such losses it declared said embargo in October, 1948. If and when the Mississippi Valley Barge Line Company is called upon under the contested order to reestablish service on basis of the prescribed differentials it may find it necessary to petition the Commission for modification of the differential plan or for a temporary stay of the effectiveness of its order. In the present posture of the proceeding it is important only to remember that neither of those circumstances has the slightest bearing upon the questions of law which the reviewing court must decide.

[6a] See Inland Waterways Corporation Act, pp. 45-48, *post*.

unsatisfactory port relations, other inconsistencies, and incongruous results produced thereby (R. 45); and

The comprehensive proposals for revisions of the existing joint differential rate structures submitted by Federal, Valley, and the Mississippi Valley Association, and the basis for each (R. 45-46).

The Commission noted that the barge-line proposals were based upon a "relative level of rates necessary to cover full cost, including a return on investment, for the barge portion of the through haul, and to provide for the rail portion of the through haul revenues as great as if the traffic were transported all-rail" (R. 46).

The findings of the Commission.

General findings as to the prescribed routes and differentials being justified as reasonable.

With respect to the differential routes and rates prescribed by it, the Commission entered three numbered formal findings. (R. 51-52) In No. 1, which deals with class rates, it found that the differentials individually named in the appendices to the report were "justified as reasonable differentials." In Finding No. 2, which deals with commodity rates, the Commission specified the method for determining such differentials and found that the resulting differentials "would be justified." In Finding No. 3, which deals with through routes, the Commission found that those prescribed in connection with the differentials found justified and reasonable in Findings Nos. 1 and 2 are "necessary and desirable in the public interest."

Earlier in the report, after describing the rate proposals before it, the Commission stated that the appendices to the report showed the differentials "which we consider justified." (R. 48) Immediately following that the Commission indicated the basis which it approved for the grouping of interior points to be included at a common differential with a specified key-point, and noted certain restrictions on the grouping proposed by Federal which it provided "to prevent excessive circuity." (R. 48)

Special findings as to particular portions of the adjustment.

The Commission specially discussed the commodity rate adjustment, indicated the method to be used in determining differentials in connection with commodity rates, and said, "There appears to be no better way of dealing generally with commodity rates." (R. 49)

A special discussion was also devoted to differential rates on sugar as to which the Commission found:

> A large amount of evidence concerning sugar rates was presented in this proceeding, but before the hearings were concluded a voluntary adjustment was reached providing for a scheme of differentials differing from the general basis. The barge-and-rail rates on sugar have a vital relation to the general competitive rate relationships on sugar from all producing points to midwestern consuming points, and we consider it highly desirable that no change in sugar rates be made as a result of our findings here. (R. 49)

Pursuant to that finding existing differential rates on sugar were excepted from the Finding No. 2. (R. 52)

The Commission also gave special consideration to rates on bulk commodities, as to which it found:

> Bulk commodities are largely handled in an all-water service or on combination rates not under a common arrangement for through carriage, for the reason that quantities transported by barge must be larger than the ordinary carload in order to use the cargo-carrying space. Furthermore interior points generally do not have facilities for handling such large consignments. For that reason we shall not prescribe through routes and joint rates on bulk commodities. (R. 50)

Consistent with the foregoing, commodity rates on commodities in bulk were excepted from Finding No. 2. (R. 52)

Special consideration and findings were also provided with respect to the adjustment of differential barge-rail rates from New Orleans to the interior as compared with all-rail rates from Galveston and Houston. The Commission found that existing situations which provided lower barge-rail differential rates from New Orleans to Oklahoma City via Memphis than the corresponding all-rail rates from Houston to Oklahoma City could not be defended. (R. 50) Consistent with that view the Commission imposed special limitations on barge-rail rates between New Orleans and interior points when the rail portion of the barge-rail route is longer than the rail distance between Houston-Galveston and the same interior point. (R. 52, 76-77)

Findings as to relative costs of service.

Additional findings of the Commission to be considered relate to costs of service via rail as compared with via barge. The rate and differential proposals offered by the barge-line appellees proceeded on the assumption that the existing rail rate structure reflected a proper allocation of rail costs, including return on rate making value, to the particular point-to-point hauls of particular commodities to which such rail rates apply. Consequently, they introduced no evidence dealing with all-rail costs although they did make a complete showing as to their own costs in transporting the particular commodities which made up the barge-rail traffic. The railroads offered as evidence only figures derived from general averages experienced in the handling of all commodities between all points on the railroads embraced in the studies.[7]

The barge lines offered substantial evidence in criticism of the various studies of rail costs and of the comparisons with barge costs based thereon.[8] These criticisms went to the underlying data, to the methods used in arriving at unit costs, and to the theory of the railroads that costs based on a general average for all traffic were representative of costs on the particular composition of traffic which moves in barge-rail service.

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[7] Exhibit Nos. 923, 1049, 1149, 1351, 1352 and 1353 in the Commission's record, and the testimony given in explanation thereof, illustrate this evidence.

[8] This is illustrated in the testimony of Witness Fletcher found at pages 15206-15307, 15547-15644 of the transcript and exhibits Nos. 1376 to 1409 introduced in connection therewith as shown in the Commission's record.

The Commission made no findings to settle the controversy as to these matters. Rather, it said:

> . . . No useful purpose would be served by reviewing these criticisms with a view to making a finding as to relative all-rail and barge-and-rail costs in the period 1933-38, which the cost studies covered. Since then there have been radical changes in the conditions affecting cost of transportation service by barge as well as by rail. (R. 33)

The Commission record provides no showing of general average unit costs for rail transportation in the period after 1933-38. The Commission record does contain some financial data for the period extending up to 1947 for barge lines by reason of the stipulation of annual reports into the record heretofore mentioned. For Federal such annual reports showed as of 1947 that prospects for profitable operation were dependent on a program of rehabilitation and modernization of methods and equipment.[9]

Following its refusal to make any finding one way or the other as to the relation of all-rail to barge-line costs and the note it took of annual report data for Federal in 1947, the Commission said:

> In the face of these facts we cannot find that at the present time there are demonstratable economies in barge-rail transportation on the Mississippi River and its tributaries, including the Warrior, which from the standpoint of cost of service would justify differentials. (R. 36)

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[9] These recitals as to conditions in 1947 referred to the entire operations and traffic handled, the preponderance of which was not involved in the joint rate structure under review. See tonnage data in footnote 5 on page 7 above. Furthermore, there was no separation of operations conducted by Federal to carry out the pioneering function with which it has been charged by the Congress from other operations.

The lower court correctly construed the foregoing as the Commission's statement of its inability to make an affirmative finding, and not as an affirmative finding that the cost of service via all-rail is less than via barge. (R. 183)

The findings as to Congressional policy.

The railroads contended in the Commission proceedings that as a matter of law, no differential may be found justified unless there is an affirmative showing of lower costs of service via the barge-rail route than via the all-rail route between the same points. This requirement is alleged to be found in the National Transportation Policy (59 Stat. 899) and section 307(d) of the Interstate Commerce Act (54 Stat. 937). In a section of its report dealing with congressional policy this contention was carefully appraised in the light of all pertinent legislation which might throw light on the congressional intent. The conclusions of the Commission on this point were stated as follows:

> In view of these expressions of congressional policy with respect to barge transportation on the Mississippi River system, the interpretation of section 307(d) urged upon us by the railroads and their supporters that the justification for differentials must rest upon proof of lower cost of barge-rail service seems much too narrow. (R. 41)
>
> * * *
>
> Neither the wording nor the legislative history of that section supports the conclusion that differentials are justified only where there is such an affirmative showing. (R. 41)

In this same section of its report the Commission took note of the railroad contention "that the differential rates are economically unsound because they

tend to divert traffic from all-rail routes over which it can be handled more advantageously and thus increase the economic burden on the transportation system as a whole."

As to this the Commission found:

> We are unable to accept this argument based on the national transportation policy. In the past several years Federal has received continuing consideration by congressional committees on appropriations as well as others. It definitely appears from that consideration that Federal is [fol. 49] deemed to be performing a pioneering function for the purpose among others of demonstrating the advantages of joint barge-and-rail transportation in the belief that such service eventually will prove to be economical.[21] It is not for us to say that the experiment should now come to an end. (R. 42-43)

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[21] In a report to the House Appropriations Committee by the House Small Business Committee, dated May 14, 1947, relating to the Inland Waterways Corporation, the latter committee said:

"It is apparent that the privately owned barge lines will not initiate service on the Missouri River. These operators are generally of the opinion that operations on the Missouri are unfeasible, in view of the speed of the current, and the depth and instability of the channel.

"With the proposed new towing equipment, Federal Barge Lines hopes to show privately owned barge lines that operations on the Missouri need not be unprofitable.

"Barge service is of great importance to the communities on the Missouri River. Rail transportation is costly from these interior points and it is difficult for them to compete with communities which are closer to their markets. The Panama Canal increased their competition by cutting transportation costs from the Pacific coast. Thus, their markets were further restricted. The railroads then, to compete with the Canal, initiated water-compelled rates from the west coast to Chicago so that it costs less to ship some commodities to and from Chicago from and to the west coast than it does in the case of certain mid-west communities.

"By lowering transportation costs, barge service will give this area access to new markets and sources of supply."

When read in its context this particular section of the report had as its primary purpose the recital of the reasons which led the Commission to conclude that the railroads were wrong in contending that findings based on affirmative proof as to relative costs of service is essential, as a matter of law, to the fixation of lawful differentials.

The Commission concluded this section of its report by finding:

> Viewing the facts before us in the light of the clear congressional policy with respect to water transportation on the Mississippi River and its tributaries we conclude that joint barge-and-rail routes and rates generally are necessary and desirable in the public interest and differentials between such rates and all-rail rates are justified. (R. 44)

The foregoing summarizes the findings which express the ultimate conclusion of the Commission as to the prescribed barge-rail routes and differentials. Those findings show that such conclusions were predicated on the evidence before the Commission, that in particular cases the Commission imposed special requirements to avoid wasteful service and to avoid discriminations against localities not served by barge-rail routes, and that the Commission applied the law in the belief that findings based on an affirmative showing of lower costs via the differential route was not a *sine qua non* to a valid order.

Other findings which relate to matters considered by the Commission in reaching its ultimate conclusion.

The Commission rejected any rigid formula as inappropriate to the determination of justified and reasonable differentials. (R. 46) The individual differentials shown in the appendices to the report occupy twenty closely spaced pages of record, as many as five different columns for differentials being shown on many pages. (R. 55-74) The Commission did not treat the determination of differentials as a mathematical problem to which an equation can be applied, nor did it spell out the weight which it gave to each item of evidence, nor did it disclose the mental operations by which its decision was reached as to any particular differential.

Weight was obviously given to experience under the existing differential adjustment. As to that the Commission said:

> Controversy over the subject of joint barge-and-rail rates has perhaps tended to obscure the facts that from the standpoint of practicality the present structure of joint rates by and large is a fairly satisfactory product of an evolutionary process. (R. 44)

Specific mention was made of "unsatisfactory port relations and other inconsistencies" and of "incongruous results" produced by the Ex Parte No. 96 formula which is the basis for a part of the existing structure. (R. 45) That led the Commission to conclude:

> Under present conditions it is not necessary or desirable to adhere rigidly to the Ex Parte 96

> formula, which was originally devised when only Federal was in operation. (R. 45)
>
> * * *
>
> Since distance scales of joint barge-line rates having many of the aspects of a formula are not feasible, the only alternative is the prescription of individual rates. Because of the extensive territory involved, these must necessarily be confined to groups or key points. (R. 46)

The value of the service to shippers (R. 38), the benefit to shippers of barge-rail rates lower than all-rail rates (R. 39), and the increased opportunity of Mississippi Valley shippers to compete with those on or near the sea coasts where coastwise and intercoastal service is available (R. 49) were treated as circumstances bearing upon the ultimate conclusions.

The report makes it clear that weight was accorded the comprehensive proposals of Federal and Valley. (R. 45-48) If the record before the Commission had been printed so as to make convenient an appraisal of those proposals, the Court could better appreciate the complete coverage which they provided of all rate making circumstances and factors which might be of interest to the administrative body. Both proposals were predicated on a complete and comprehensive analysis of the joint traffic as distinguished from the port-to-port traffic and of the barge-line costs incurred in the transportation of the joint traffic. Additionally, extensive analyses were made as to the divisions which the rail lines received out of the corresponding all-rail rates on a like consist of traffic. The Commission's

report makes it plain (R. 46) that the differentials found justified as reasonable were designed:

> 1. To give connecting rail lines substantially the same revenue out of barge-rail rates as they would receive if the traffic were handled in connection with paralleling rail lines on the higher rail rates, and
>
> 2. To leave a remainder to the barge lines which would cover their actual costs, including the transfer of the traffic between barges and cars, for the water leg of the through journey, plus a fair profit.

The barge-line proposals suggested particular differentials for interior points according to specified groups. The differentials proposed bore varying relations to the all-rail rates. For interior points involving unreasonable circuity and for routes in which the barge hauls were a relatively small portion of the total hauls, no differential rates were proposed. Generally speaking the Commission adopted the grouping and the limitations on differentials shown in the Federal proposal, although it noted it imposed additional limitations of its own to prevent "excessive circuity." (R. 48)

Judgment of the lower court.

On January 12, 1950, the court below unanimously upheld the validity of the order as supported by sufficient findings, with those findings supported by substantial evidence, and as involving no misinterpretations of statutory provisions. (R. 189) The three-judge court did not content itself with simply making findings of fact and entering conclusions of law. Rather in

an opinion written by Lindley, J., it carefully examined the report of the Commission in the light of the appellants' contentions and found each and every one of those contentions to be without merit. (R. 173-184) That opinion provides an extremely helpful discussion of the points on which appellants rely and shows that none of them find support in either logic or law.

SUMMARY OF ARGUMENT

I. The appellants do not complain of the order as one to which they are subject. They complain only as competitors of those alleged to be favored by the order. That gives them no standing to maintain their suit. The loss of a competitive advantage is not the loss of a property right entitled to protection in an equity court.

II. The Commission's report shows on its face that its order was entered upon a consideration of all current and relevant evidence in the record before it. Among other things, that evidence dealt extensively with the history of barge line operations and rates; with the experience had under the existing structure of joint barge-rail rates, that being in part satisfactory and in part unsatisfactory; with shippers' interests and needs; with relative value of services to shippers; with the effect of rates and differentials on the flow of traffic; with the competitive situation as between carriers and as between shippers in various localities; and with the measure of differentials which would encourage the movement of traffic, permit barge lines to participate in barge-rail rates lower than all-rail rates, and at the same time pay to connecting rail lines substantially the same divisions that they would receive out of corresponding all-rail rates. The evidence so considered did not include that which dealt with the relative costs of service via barge as compared with

via rail because such evidence was found to be unrepresentative of conditions experienced on the date of the report. The Commission held that it had authority to prescribe differentials despite the absence of acceptable evidence as to relative costs of service and that congressional policy did not, as appellants contended, require the use of such costs as the controlling test in fixing a lawful relation of barge-rail to all-rail rates. There is nothing in the governing statutes to show that this view of the congressional policy is a mistaken one.

The Commission's finding on this point, which negatives the basic proposition on which appellants rely, is not, however, the *basis* for the order. So to view the report and order would credit the Commission with building the prescribed barge-rail adjustment on a void or a vacuum as its sole foundation, an engineering impossibility; and would require the Court to ignore all that is said in the comprehensive, although sharply condensed, report as to the evidence considered. Such a strained, unnatural construction of the report is not warranted by anything said or implied therein.

III. Cost of service by railroad could not, in any event, be determined from the evidence of record. All evidence as to rail costs was based on general averages for all commodities handled between all points and there was no proof that such general averages were representative of the particular hauls of the particular commodities involved. It is not so much that the proof as to this was lacking as it is that it was impossible

to produce such proof. The composition of the barge-rail traffic is limited, generally speaking, to merchandise goods shipped in packages, whereas the general averages for rail costs are based on services in which an entirely different group of commodities predominate, such as coal, grain, tank-car traffic, live stock and perishable commodities. Having only general averages for rail costs largely influenced by the heavy volume of the commodities just mentioned, it was impossible to make a comparison of like with like.

Over a period of years the Commission has, on repeated occasions, prescribed water-and-rail through rates lower than corresponding all-rail rates without, on any occasion, having any evidence as to relative costs of service. The statutory standards as to the lawfulness of the barge-rail rates here involved relate to public interest and reasonableness and are the same as were applied in such prior cases.

The rail rates themselves are not controlled by cost of service. They have been influenced by all the various circumstances which make up the transportation standard, including value of service, shipper needs, and carrier needs. In such a situation it would be impossible to determine barge-rail rates by differentials reflecting cost of service without producing an impracticable and unworkable rate structure.

Even if it were possible and practicable to determine cost of service relations and to treat such relations as a circumstance to be considered, the Commission's limit of judgment should not, as appellants urge, be restrained to the point where only such costs may be used

to measure lawful differentials. Heretofore this Court has held that neither proof of nor a finding as to relative costs of service is an indispensable condition precedent to the prescription of rate relations. This Court has also held that it is within the Commission's final say-so as to whether cost evidence should be accepted or rejected, and if accepted, as to the weight to be given to it. Orders of the Commission which fixed rates and rate relations without conformity to cost and cost relations, or even contrary to cost relations, have been sustained when not involving confiscation. There is no reason to apply any different rule in this case than has heretofore been applied by this Court in the line of cases just described.

The words "inherent advantages" in the National Transportation Policy have not and should not be construed as requiring affirmative proof of relative costs of service as the sole and controlling test of lawful differentials. Such a construction would give the Commission no opportunity to exercise its discretion to promote sound economic conditions in transportation and among the several carriers, to encourage the establishment of reasonable rates free from unfair or destructive competitive practices, or to develop, coordinate and preserve the national transportation system for the broad and general purposes stated in the Policy. When standards are general and to an extent overlapping, their application by the regulatory body should be free of judicial restraint except in clear cases of arbitrary or unconstitutional action.

IV. The report and order of the Commission contain the findings which are required by law when

through routes and joint differential rates are prescribed for water-rail application. Those findings show the application of statutory standards. The Commission is not required to do more. Appellants are mistaken when they urge that the Commission is required to specify the weight it gave to particular evidence and to set forth the details of the mental process by which it arrived at its conclusions.

V. The appellants in Nos. 46, 47 and 48, assuming they have a property right which the order affects, raise only one point not presented in No. 45, i.e., the alleged violation of the port preference clause in the Constitution. That clause does not control orders entered by the Commission within the limits of its statutory authority which do no more than provide different rates for different ports, even though in different states.

ARGUMENT

I. The standing of appellants to maintain their suit.

The railroad appellants in No. 45 do not show what, if any, property or property right of theirs is affected by the Commission's order. At page 52 of brief they say:

> * * * It is not the rail lines with which the barge lines connect, but those with which they are competitive, which are here complaining.[10]

If prior decisions of this Court are to be followed, the appellants have no standing to maintain their suit when they complain of the order only because it affects their competitive position.

Only those within the class on whom legislation alleged to be invalid operates directly have a right to equitable relief. *Darnell* v. *Indiana,* 226 U.S. 390; *Tennessee Electric Power Co.* v. *T. V. A.,* 306 U.S. 118, 137-140.

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[10] To illustrate: The Commission prescribed a through route and joint differential rate via barge lines from New Orleans to St. Louis and thence via various railroads including the Wabash, the Illinois Central, and the Gulf, Mobile & Ohio, to Chicago. The Gulf, Mobile & Ohio and the Illinois Central operate direct all-rail routes from New Orleans to Chicago. The Wabash does not operate south of St. Louis. The complaint is not by the Wabash, nor is it by the Illinois Central or Gulf, Mobile & Ohio, as a connection forced into a joint arrangement with barge lines against its desire to have *only* railroad connections. Rather the Wabash has no complaint in the illustrative case and the Illinois Central and the Gulf, Mobile & Ohio complain only as operators of all-rail routes from New Orleans which compete with the barge leg in the barge-rail route.

A rail line has no interest, legal or equitable, in competitive traffic, (*Atchison, T. & S. F. R. Co.* v. *U.S.*, 279 U.S. 768, 780) and without such an interest it has no standing to question the validity of the Commission's order. In *United States* v. *Illinois Central R. Co.*, 291 U.S. 457, appellees questioned the authority of the Commission to enter a barge-rail differential order without a hearing. This Court dealt with the merits of that case on the stated assumption that the questioned order, if enforced, would have affected property rights of appellees as *connecting* rail carriers. However, even as to carriers in that position, Mr. Justice Stone in concurring expressed the view that appellees who did not complain of confiscation had no property interest in prospective traffic which entitled them to resort to the equity powers of a federal court (pp. 465-466). In *Edward Hines Yellow Pines Trustees* v. *United States*, 263 U.S. 143, a shipper sought to enjoin an order of the Commission as invalid, his only interest being that of a competitor of the shippers favored by the order. At page 148 this Court said:

> But plaintiffs could not maintain this suit merely by showing (if true) that the Commission was without power to order the penalty charges cancelled. They must show also that the order alleged to be void subjects them to legal injury, actual or threatened. This they have wholly failed to do.

See also *L. Singer & Sons* v. *Union Pacific R. Co.*, 311 U.S. 295, 304; *Interstate Commerce Com.* v. *Chicago, R. I. & P. R. Co.*, 218 U.S. 88, 109; and *Sprunt & Son* v. *United States*, 281 U.S. 249, 256-257. In the case last cited this Court observed that merely to de-

prive plaintiffs of a competitive advantage by means of a Commission order alleged to be invalid neither subjected nor threatened plaintiffs with any legal wrong.

Since the appellants in No. 45 sue only as competitors of the appellee barge lines, this case is very like *Mississippi Valley Barge L. Co.* v. *United States,* 292 U.S. 282. There a barge line alleged that an order which authorized reductions in competitive rail rates was invalid as contrary to the declared policy of Congress. This Court held that contention to be without merit. In addition, it expressed doubt that the appellant had a standing sufficient to maintain the suit, citing the *Sprunt* case, and said at page 290:

> These objections to the suit coalesce to such an extent with the merits of the appellants' grievance under section 500 of the statute (Transportation Act, 1920) as to make it unnecessary to separate them.

We should note that none of the above cited cases which involved Commission orders arose under the National Transportation Policy added to the statute in 1940. Whether that added provision makes for a different situation as to the point immediately under consideration has not been ruled upon. Appellees did not seek a ruling on the point in the lower court because at that time the appellants in No. 45 had not made clear the capacity in which they complain.

The standing of the appellants in Nos. 46, 47 and 48, is no better than that of the appellees in No. 45. They are shippers who make no use of the prescribed routes and differential rates but compete with those who do.

They are not within the class on whom the order alleged to be invalid operates. Consequently, they have no independent right to maintain a suit challenging the validity of the Commission's order.

II. The Commission based its order upon the application of the substantive provisions of the Interstate Commerce Act to the facts, not upon a mistaken assumption as to Congressional policy.

The appellants contend that the Commission rested its order solely upon a mistaken view as to congressional policy and that it ignored the facts. The report shows on its face that the facts of record were not ignored. The Commission states categorically that its ultimate conclusions are based upon its view "of the facts before us" (*infra*, p. 17). Consideration of such facts impelled the careful working out by the Commission of all the details involved in the complex problem before it, as the report clearly discloses.

Appellants' argument on this point is based upon a misconception of that section of the report which deals with congressional policy. That section occupies five printed pages in the record (R. 39-44). The complete text of the report, excluding headnotes and appendices, which shows the many circumstances and factors taken into consideration occupy thirty-six printed pages (R. 18-54). When the five pages are read in the context they appear to be a preliminary discussion by the Commission of the principal point on which appellants relied throughout the proceedings before the Commission as well as in the lower court. It was their contention that a finding based on affirmative proof of

lower costs of barge-rail service than of all-rail service for the particular traffic involved was an indispensable condition precedent to the valid prescription of *any* differential.

The Commission might have disposed of that contention simply by finding that it is impossible, as a practical matter, to determine by the use of general average costs what is the actual cost of carrying a particular commodity between particular points when that commodity is but one out of thousands of different commodities carried by railroad between thousands of different points. Compare *Railway Express Agency* v. *United States*, 6 F. Supp. 249, 253 and cases cited. However, the Commission chose to take a different road. It simply held, as a matter of law, that neither the statute nor congressional policy imposed the requirement urged by the railroads (*infra*, p. 15).

To accept appellants' view on this point would require the Court to close its eyes to all except the five pages, to read those pages out of context and apart from the remainder, and to treat those five pages as constituting the report in its entirety. Additionally, a meaning would have to be given to the language of the Commission within those five pages which the words themselves do not warrant. This brings us to consider whether the Commission was correct in holding that a finding based on affirmative proof as to cost of service relations is not an indispensable condition precedent to the prescription of barge-rail differentials.

III. Proof of and a finding as to the cost relation of barge-rail to all-rail service is not an indispensable condition precedent to the entry of a valid order prescribing differentials.

Appellees do not question that relative costs of service are pertinent, though not indispensable, to the determination of reasonable and otherwise justified differentials. They did not on their part introduce evidence of all-rail costs because there is no method of determining point-to-point costs of rail service for the particular traffic under consideration.

The particular traffic handled in barge-rail joint service consists primarily of package or merchandise freight such as canned goods, sugar, iron and steel, etc. It is a simple matter to determine the barge costs directly associated with the port-to-port movements of those particular commodities, and that was done. It is impossible to determine railroad costs of service on that identical traffic between identical points because the only cost data for rail service available or shown in this record represents general averages covering the transportation of all commodities which move between all points in all-rail service. Such averages include among others the haulage of commodities such as coal, petroleum products in tank cars, bulk grain, live stock, ores, and perishable freight of all kinds, none of which are handled in barge-rail service, although in total they represent the preponderance of railroad traffic. In that circumstance any comparison of all-rail costs with barge-rail costs could not be a comparison of like with like. The fundamental infirmities involved in an attempt to use general average costs on all traffic to determine the particular costs associated with the

movement of particular commodities between particular points have repeatedly been recognized by the Commission and this Court.[11]

The appellants claim that it is beyond the Commission's authority, as a matter of law, to dispose of this case upon the usual criteria of rate making and that relative costs are an indispensable element whenever differential water-and-rail rates are involved. It is significant that in the many water-and-rail differential adjustments heretofore prescribed by the Commission it has reached conclusions and issued orders without having the benefit of any evidence and without making findings as to relative costs.[12]

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[11] *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 380-381; and *Northern P. R. Co.* v. *Department of Public Works*, 268 U.S. 39, 43. See also the discussion of "unsifted averages" in *Interstate Commerce Com.* v. *Mechling*, 330 U.S. 568, 581-583.

West Coast Lumbermen's Assn. v. *Akron, C. & Y. Ry. Co.*, 183 I.C.C. 191, 198-199; *Proposed Lake Erie-Ohio River Canal*, 235 I.C.C. 753, 761; *Charges for Protective Service to Perishable Freight*, 241 I.C.C. 503, 510; *Bituminous Coal to Youngstown District*, 262 I.C.C. 683, 697; *Lighterage Cases*, 203 I.C.C. 481, 510; *Divisions of Joint Rates and Fares of M. & N. A. Ry. Co.*, 98 I.C.C. 119, 129; *Western Trunk-Line Class Rates*, 164 I.C.C. 1, 188; *Commonwealth of Ky.* v. *Ahnapee & W. Ry. Co.*, 213 I.C.C. 297, 308; *North Carolina Corp. Comm.* v. *Akron, C. & Y. Ry. Co.*, 213 I.C.C. 259, 274; *Pick-up and Delivery in Official Territory*, 218 I.C.C. 441, 477; *Ashland Coal & Ice Co., Inc.* v. *Atlantic Coast Line R. Co.*, 241 I.C.C. 120, 126, 129.

[12] As to ocean-and-rail rates between the north Atlantic and the southwest, see *Consolidated Southwestern Cases*, 123 I.C.C. 203, 364-378, 211 I.C.C. 601, 222 I.C.C. 229; as to lake-and-rail rates, see *Lake and Rail Class and Commodity Rates*, 205 I.C.C. 101, 214 I.C.C. 93; and as to ocean-and-rail rates in connection with Seatrain Lines, see *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 243 I.C.C. 199, 211. In the same category of cases is *Houston Cotton Exchange* v. *A. & A. R. R. Corp.*, 87 I.C.C. 392, 93 I.C.C. 268, in which differential rail-water-rail rates on cotton from points in Oklahoma to New England were determined "upon all the facts of record" (87 I.C.C. 398). The record in that case showed nothing as to relative costs of service and the order was sustained by this Court in *Chicago, R. I. & P. Co.* v. *United States*, 274 U.S. 29.

Even if it were practical to determine true cost of service relations on particular point-to-point moves, it would nevertheless be impractical to fix differentials solely on that basis. This is because rail rates to which such differentials are applied are not themselves related to or based on costs. Exhibit No. 1300 in the Commission's record, a reproduction of which appears just inside the back cover of this brief, shows point-to-point all-rail rates on traffic moving via barge-rail which range from 15 percent higher to 307 percent higher than all-rail costs when such costs are based on general averages for all traffic. These varying relations to general average costs reflect the influence of value of service and many other considerations, all embraced by the general term "transportation standard", to which lawful all-rail rates must conform. *United States* v. *Illinois C. R. Co.*, 263 U.S. 515, 524. The Commission in dealing with rail rates has said that for cost relations to control to the exclusion of all else could only result in "confusion and an impractical and unworkable rate structure". *Lighterage Cases*, 203 I.C.C. 481, 540. Any barge-rail rate structure to be workable must respond to the same type of influences as the rail rate structure on which based. There is no statutory warrant for putting barge-rail rates in the straight-jacket of costs of service any more than there is warrant for making costs or cost relations the sole test for lawful all-rail rates.

In *Louisiana Pub. Serv. Com.* v. *Texas & N. O. R. Co.*, 284 U.S. 125, this Court had under review an order of the Commission prescribing rates on sand and gravel which included an arbitrary—a type of differential—

when the service involved a crossing of the Mississippi River. The order was assailed because the arbitrary had no support in evidence as to costs or differences in costs. In sustaining that order this Court said at page 132:

> Neither the failure of the Commission separately to ascertain and state, nor the absence of evidence to show, the cost to carriers of the ferry service requires annulment of the rates prescribed for transportation between the places on the east bank of the Mississippi and points west of the river.
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> * * * While in the making of reasonable rates all the material facts are to be regarded, it has never been deemed necessary or practicable—if indeed it is at all possible—to ascertain in advance the cost to carriers of each of the various elements embraced in the transportation service. The Act does not require any such determination.

Regardless of what evidence as to costs of service is before the Commission it still is within its province to determine whether such evidence shall be accepted or rejected and, if accepted, the weight to be given thereto. See *Illinois Commerce Commission* v. *United States*, 292 U.S. 474, 481; *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 359; and *New York* v. *United States*, 331 U.S. 284, 331. In the case last cited this Court sustained the order of the Commission in *Class Rate Investigation*, 1939, 262 I.C.C. 447, and one ground for attack upon the order was the failure of the prescribed rate relation to conform to the evidence before the Commission as to relative costs.

Failure to proportion prescribed rates or rate relations to relative costs does not constitute arbitrary action by the Commission. As stated, in *New York* v. *United States, supra,* this Court sustained an order of the Commission which would have been set aside if the rule were otherwise. In *Ayrshire Collieries Corp.* v. *United States,* 335 U.S. 573, 592, the appellants assailed an order of the Commission prescribing origin rate relations, such relations being expressed in rate differences, which are akin to differentials, in respect to rates on coal. Appellants contended that the rate differences required were not warranted by any difference in transportation conditions or in distance. That is like the contention that they were not warranted by differences in cost. This Court sustained that order against that line of attack.

In *Petroleum between Washington, Oregon, Idaho, Montana,* 234 I.C.C. 609, the Commission fixed minimum reasonable rates for rail and motor services but not in relation to the respective costs of service. In citing that case in *New Automobiles in Interstate Commerce,* 259 I.C.C 475, 536, the Commission observed that its finding therein "was based on the doctrine that minimum rates prescribed for different transportation agencies need not necessarily reflect the respective costs." The order in the *Petroleum* case was sustained by a three-judge district court in *Scandrett* v. *United States,* 32 F. Supp. 995, and was affirmed in this Court on motion in a *per curiam* opinion, 312 U.S. 661.

None of the cases above cited involved orders under section 307(d) of the Act. However, there is nothing

in that section or in its legislative history to suggest that reasonable barge-rail rates and differentials must be tested, as a matter of law, by standards different from those applied with the approval of this Court in the cases above cited. The words "reasonable" and "justified" do not connote a different standard when used in section 307(d) than when used in other sections of the Act.

Appellants place great reliance on *Interstate Commerce Com.* v. *Mechling*, 330 U.S. 567, in which this Court struck down an order of the Commission which sought to impose a higher rail rate on traffic received from a connecting barge line than the same railroads assessed on traffic received at the same point from a connecting rail line. Appellants say that that case rested on the principle that the lower cost of service via barge was an inherent advantage (Brief, appellants in No. 45, pp. 18-19, 35) and that the lower operating costs of the barge line in that case was the controlling factor in the decision of this Court (Brief, appellants in No. 45, p. 38). That could not possibly be so because in that case there was no showing whatsoever of rail costs. That case turned squarely on the proposition that as to the on-movement by railroads from the reshipping point there was no showing of a difference in conditions to justify a different rate on grain received from a barge line connection than on grain received from a rail line connection. The section of the Act construed in that case is 3(4), which forbids discrimination as between connecting lines.

Insofar as the test of "inherent advantages" is concerned that case stands only for the proposition that

such advantage is with the barge line when, its own cost considered, it is able to maintain a rate to shippers lower than the rate contemporaneously provided between the same points by rail. Parenthetically, as has been shown above, the differentials prescribed in this case fairly conform to that proposition and the lower court so viewed them. (R. 178)

The emphasis of appellants on the words "inherent advantages" in the National Transportation Policy, and their claim that those words mean only relative costs of service finds no support in the enactment or in its legislative history. As this Court said in *Interstate Commerce Com.* v. *Inland W. W. Corp.*, 319 U.S. 671, 691, the standards provided are "of considerable generality and some overlapping". The preservation of transportation by water as well as by rail is clearly indicated. Sound economic conditions are to be fostered. The establishment of reasonable charges without destructive competitive practices is to be encouraged. In dealing with the national transportation system the Commission is made the coordinator of different modes of transportation. *Eastern-Central M. C. Asso.* v. *United States*, 321 U.S. 194, 205-206. It would be impossible to carry out the National Transportation Policy if the Commission were to discard all considerations in the making of rates other than cost of service.

IV. The Commission's order discloses a rational basis for the conclusions reached and it is fully supported by all essential findings.

When the case is like the instant case there is no requirement in the statute that the Commission do more than "state [its] conclusions * * * together with its decision, order, or requirement in the premises" (sec. 14(1) of the Interstate Commerce Act; 41 Stat. 484). Appellants' argument on this point proceeds without taking note of that governing statutory provision.

If this Court agrees with the lower court that affirmative proof of lower costs of service via barge than via rail is not an indispensable predicate for a valid order there can be no question but in the mass of the facts before the Commission there is support for the precise differentials prescribed. That being so the Commission's findings on the facts are conclusive. *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503, 512, 513.

This is not the kind of a case in which the statute makes a particular preliminary finding a necessary condition to the exercise by the Commission of its statutory power (compare *United States* v. *Baltimore & O. R. Co.*, 293 U.S. 454, 463, 464) or in which preliminary findings are necessary to show that the Commission observed or adhered to a specified standard (compare *United States* v. *Carolina F. Carriers Corp.*, 315 U.S. 475).

This is an ordinary rate case. The Commission gave its judgment on the issues before it in the light of

all facts of record. The Commission was not bound to specify the weight given to any item of evidence, or to disclose the mental operations by which its decision was reached. *Baltimore & O. R. Co.* v. *United States,* 298 U.S. 349; *United States* v. *Pan American P. Corp.,* 304 U.S. 156; *Pennsylvania R. Co.* v. *United States,* 323 U.S. 588; *New York* v. *United States,* 331 U.S. 284. It is sufficient to sustain the validity of the order when the report shows, as does the report in the instant case, that the Commission viewed the evidence before it as all that was needful to the discharge of its duty in the premises and that such evidence was fairly considered in reaching its ultimate conclusions. *Interstate Commerce Commission* v. *Jersey City,* 322 U.S. 503, 512, 513. Even though the Commission did not expand its report by illustrating the detail of all of the evidence which led it to conclude as it did, this Court may not doubt that all such evidence was fairly considered.

Appellants contend that it was not sufficient for the Commission to find that the prescribed through routes and joint rates were necessary and desirable in the public interest and that the prescribed differentials were justified as reasonable. They say that the Commission must find in addition that the rates resulting from the application of the differentials are "reasonable rates" and that the absence of such a finding leaves the order without necessary support. However, section 307(d), which provides the authority exercised, requires only that the through routes and joint rates be deemed by the Commission "to be necessary or desirable to the public interest" and that the differentials shall be "such reasonable differentials as it

may find to be justified". The findings of the Commission clearly conform to the statute. Furthermore, a finding that a differential is "reasonable" and that it should be deducted from a particular all-rail rate to arrive at the prescribed barge-rail rate is the equivalent of finding that the resultant barge-rail rate is reasonable.

V. Appellants in Nos. 46, 47 and 48, show no independent grounds for the invalidity of the Commission's order as to them.

The appellants in Nos. 46, 47 and 48, are shippers who make no use of the prescribed differential routes and rates. They consider themselves to be injured by such rates because they are or can be used by competitors. Passing the question of the standing of these appellants to sue, they suggest no ground for invalidity independent of those asserted by the appellants in No. 45, except as to the alleged violation of the port preference clause of the constitution. That point is settled against them by *Louisiana Pub. Serv. Com.* v. *Texas & N. O. R. Co.*, 284 U.S. 125, 131.

CONCLUSION

For the foregoing reasons the judgment of the District Court should be affirmed.

Respectfully submitted,

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HARRY C. AMES,
ROBERT N. BURCHMORE,
JOHN S. BURCHMORE,
NUEL D. BELNAP,
Counsel for Barge-Line Appellees.

APPENDIX

Interstate Commerce Act, As Amended:

NATIONAL TRANSPORTATION POLICY.

[54 Stat. 899; preceding 49 U. S. C. sec. 1.] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

* * * * *

Sec. 14. [24 Stat. 384, 25 Stat. 859, 34 Stat. 589, 41 Stat. 484; U. S. Code, title 49, sec. 14.] (1) That when-

ever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

* * * * *

Sec. 307(d) [54 Stat. 937; 49 U. S. C. sec. 907(d).] The Commission may and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by water, or by such carriers and carriers by railroad, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water. . . .

* * * * *

Sec. 320(e) [54 Stat. 950; 49 U. S. C. sec. 920(e).] Subsection (e) of section 3 of the Inland Waterways Corporation Act of June 7, 1924, as amended (U. S. C., title 49, sec. 153(e)), is hereby repealed as of October 1, 1940; *Provided, however,* That (1) any certificate

of public convenience and necessity granted to any carrier pursuant to the provisions of such subsection (e) shall continue in effect as though issued under the provisions of section 309 of the Interstate Commerce Act, as amended; and (2) through routes and joint rates, and rules, regulations, and practices relating thereto, put into effect pursuant to the provisions of such subsection (e) shall, after the repeal of such subsection (e), be held and considered to have been put into effect pursuant to the provisions of the Interstate Commerce Act, as amended.

* * * * *

Inland Waterways Corporation Act, as amended May 29, 1928, [45 Stat. 978-980, U. S. C., title 48, secs. 152-153] provides in part as follows:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled "An Act to create the Inland Waterways Corporation for the purpose of carrying out the mandate and purpose of Congress, as expressed in sections 201 and 500 of the Transportation Act, and for other purposes," approved June 3, 1924 (paragraph 152, chapter 5, title 49, Code of Laws of the United States; chapter 243, volume 43, page 360, United States Statutes at Large), be, and the same is hereby, amended to read as follows:

"SEC. 2. The capital stock of the corporation shall be $15,000,000, all of which is hereby subscribed for by the United States. Such subscription shall be paid by the Secretary of the Treasury, within the appropriations therefor, upon call from time to time by the Secretary of War. Upon any such payment a receipt

therefor shall be issued by the corporation to the United States, and delivered to the Secretary of the Treasury, and shall be evidence of the stock ownership of the United States. There is hereby authorized to be appropriated the sum of $10,000,000, in addition to the $5,000,000 heretofore authorized, for the purpose of paying such subscription."

SEC. 2. That section 3 of said Act be, and the same is hereby, amended to read as follows:

"SEC. 3. (a) Until otherwise directed by Congress, the corporation shall continue the operation of the transportation and terminal facilities now being operated by or under the direction of the Secretary of War under section 201 of the Transportation Act, 1920, as amended, and shall continue to operate the facilities now being operated or that may hereafter be operated by it under the provisions of this Act; and shall, as soon as there is an improved channel sufficient to permit the same, initiate and continue the water carriage heretofore authorized by law upon the Mississippi River above Saint Louis.

"(b) When the improvement of any tributary or connecting waterway of the Mississippi River, not including the Ohio River, shall have been completed or advanced to the point where within two years thereafter there will have been substantially completed a sufficient and dependable channel for the safe operation of suitable barges and towboats thereon; and when the Chief of Engineers of the United States Army shall certify that fact to the Secretary of War, the Secretary of War shall thereupon cause a survey of such tributary or connecting waterway to be made for the

purpose of ascertaining the amount of traffic, the terminal facilities, and the through routes and joint tariff arrangements with connecting carriers, that are or will, within such years, probably be available on such tributary or connecting waterway. As soon thereafter as such survey shall have been completed and a sufficient and dependable channel for the safe operation of suitable barges and towboats shall have been substantially completed, the Secretary of War may, if he finds from such survey that water transportation can, in the public interest, be successfully operated on such tributary or connecting waterway, extend the service of the Inland Waterways Corporation thereon as soon as the corporation shall have suitable facilities available therefor.

"(c) It is hereby declared to be the policy of Congress to continue the transportation services of the corporation until (1) there shall have been completed in the rivers where the corporation operates, navigable channels, as authorized by Congress, adequate for reasonably dependable and regular transportation service thereon; (2) terminal facilities shall have been provided on such rivers reasonably adequate for joint rail and water service; (3) there shall have been published and filed under the provisions of the Interstate Commerce Act, as amended, such joint tariffs with rail carriers as shall make generally available the privileges of joint rail and water transportation upon terms reasonably fair to both rail and water carriers; and (4) private persons, companies, or corporations engage, or are ready and willing to engage in common-carrier service on such rivers.

"(d) When the Secretary of War shall find that

navigable channels and adequate terminals are substantially available as provided in paragraph (c) of this section, and when the Interstate Commerce Commission shall report to the Secretary of War that joint tariffs with rail carriers have been published and filed as provided in said paragraph, the Secretary of War is hereby authorized to lease for operation under private management, or to sell to private persons, companies, or corporations, the transportation facilities, or any unit thereof belonging to the corporation: *Provided,* That for the purpose of this paragraph the facilities of the corporation on the Mississippi River and its tributaries shall be considered one unit, and those on the Warrior River and its tributaries as one unit: *Provided further,* That the facilities of the corporation shall not be sold or leased (1) to any carrier by rail or to any person or company directly or indirectly connected with any carrier by rail; or (2) to any person, company, or corporation who shall not give satisfactory assurance and agree, as part of the consideration for such sale or lease, that the facilities so sold or leased will be continued in the common-carrier service in a manner substantially similar to the service rendered by the corporation, together with ample security by bond or otherwise to insure the faithful performance of such agreement; or (3) until the same has been appraised and the fair value thereof ascertained and reported to the President by the Interstate Commerce Commission, and the sale or lease thereof has been approved by the President."

(e) Repealed.

* * * * *

The Denison Act, (Sec. 3(e) of the Inland Waterways Corporation Act), repealed October 1, 1940:

Sec. 3(e) [45 Stat. 980.] [Repealed, effective October 1, 1940, by sec. 320(e) of the Interstate Commerce Act.] Any person, firm, or corporation, including the Inland Waterways Corporation, engaged or about to engage in conducting a common-carrier service upon the Warrior River or the Mississippi River, or any tributaries thereof, may apply to the Interstate Commerce Commission and obtain a certificate of public convenience and necessity in accordance with the provisions of section 1 of the Interstate Commerce Act, as amended, and the Interstate Commerce Commission shall thereupon, by order, direct all connecting common carriers and their connections to join with such water carrier in through routes and joint rates with reasonable rules, regulations, and practices, as provided in paragraph (3) of section 15 of the Interstate Commerce Act, as amended, and the commission shall, in such order, fix reasonable minimum differentials between all rail rates and joint rates in connection with said water service to apply until changed by order of the commission. Such joint routes, rates, rules, regulations, and practices may be changed by order of the commission or by agreement of the water carriers and the other participating carriers. The commission shall further require the interested common carriers to enter into negotiations for the purpose of establishing equitable divisions of the aforesaid joint differential rates within thirty days after such joint rates are established, and if the carriers are unable to agree upon equitable divisions within one hundred and

twenty days from date of publication the commission shall, by order, determine and establish reasonable divisions to become effective coincident with the effective date of the joint rates. The commission is hereby given authority upon complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning (1) the reasonableness or lawfulness of any through route or joint rate filed pursuant to such order of the commission, or (2) the reasonableness of any minimum differentials between all rail rates and joint rates in connection with any water service; or (3) the reasonableness of any division of joint rates ordered by the commission under the provisions of this Act; and after full hearings the commission may make such order with reference to any such matters as it may find to be proper and in the public interest. At any such hearing the burden of proof concerning the unreasonableness or unlawfulness of any through route, joint rate, minimum differentials between all rail rate and joint rate in connection with water service, or division of joint rates shall be upon the carrier or carriers making the complaint; and the commission shall give the hearing and decision of such questions preference over all other questions pending before it, except such questions as are given like preference by law, and decide the same as speedily as possible. . . .

Statement Comparing All-Rail Costs on Movements
Exhibit 1092 with All-Rail Rates for

(1)	(2)	(3)
Item No.	Commodity	Movement From
505	Machinery	Kansas City....Mo
506	Canned Goods	Dundas....Wis
507	Rice	Stuttgart....Ark
508	Roofing	Dover....Ohio
509	Oil Cake Meal	Jersey City....NJ
510	Sauerkraut	Jonesville....Mich
511	Paper	Kalamazoo....Mich
512	" (Newsprint)	Niagara Falls....NY
513	Petroleum	Petrolia....Pa
514	Oil (Lubricating)	St. Marys....WVa
515	Band Iron	Warren....Ohio
516	Pipe	Wheeling....WVa
517	Bags	Worcester....Mass
519	Sheet Steel	Kokomo....Ind
520	Sheet Iron	Middletown....Ohio
521	Soda	Painesville....Ohio
523	Whiskey	Frankfort....Ky
524	Paper Boxes	Marseilles....Ill
525	Wire and Nails	Kokomo....Ind
527	Laundry Machinery	Peoria....Ill
528	Soap	St. Louis....Mo
529	"	" "
530	"	" "
531	"	" "
532	"	" "
534	White Lead	" "
535	Sugar	Gramercy....La
536	"	"
537	"	"
539	Sisal	New Orleans....La
540	Sugar	" "
541	Coffee	" "
542	Twine	" "
543	Sugar	" "
544	"	"
546	Roofing	Cincinnati....Ohio
547	Wood Fibre	Williamsport....Pa
548	Matches	Wheeling....WVa
550	Wagons	Toledo....Ohio
552	Earthenware	Newell....WVa
553	Steel Rods	Oil City....Pa
554	Hand Pumps	Saginaw....Mich
555	Engines	Springfield....Ohio
556	Wrought Iron Pipe	Youngstown....Ohio
557	" " "	"
559	Canned Goods	Austin....Ind
560	Canned Vegetables	"
561	Bottles	Gas City....Ind
563	Canned Goods	Austin....Ind
564	" "	"
565	" "	"
567	" "	Waldron....Ind

Statement Comparing All-Rail Costs on Movements Depicted in Witness Vivian's Exhibit 1092 with All-Rail Rates for Same Movements

Exhibit A
MR. AMES

NO. 26712
EXHIBIT NO. 1300
WITNESS Pearson
(Page 1 of 2 pages)

(3)	(4)		(5)	(6)	(7)	(8)	(9)
	Movement			Vivian's All-Rail Costs			
	From	To	Tons	Total	Per Ton	All-Rail Rates Per Ton	Percentage Ratio of Rate to Cost (%)
	Kansas City....Mo	New Orleans....La	8	$ 56.86	$ 7.12	$25.60	359.6
	Dundas....Wis	" "	23	186.08	8.09	18.40	227.4
	Stuttgart....Ark	Louisville....Ky	20	62.70	3.14	9.40	299.4
	Dover....Ohio	Memphis....Tenn	28	135.57	4.84	9.60	198.3
	Jersey City....NJ	" "	20	152.65	7.63	8.80	115.3
	Jonesville....Mich	" "	25	118.04	4.72	12.80	271.2
	Kalamazoo....Mich	" "	19	86.92	4.57	11.00	240.7
	Niagara Falls....NY	" "	34	224.00	6.06	13.40	221.1
	Petrolia....Pa	" "	15	81.14	5.41	13.40	247.7
	St. Marys....WVa	" "	16	67.93	4.25	12.20	287.1
	Warren....Ohio	" "	24	121.29	5.05	11.00	217.8
	Wheeling....WVa	" "	34	151.66	4.46	11.40	255.6
	Worcester....Mass	" "	21	213.29	10.16	12.00	118.1
	Kokomo....Ind	New Orleans....La	18	109.99	6.11	11.60	189.9
	Middletown....Ohio	" "	22	121.02	5.50	12.20	221.8
	Painesville....Ohio	" "	49	357.61	7.30	13.60	186.3
	Frankfort....Ky	" "	15	76.23	5.08	14.00	275.6
	Marseilles....Ill	Memphis....Tenn	23	83.80	3.77	9.60	254.6
	Kokomo....Ind	" "	19	67.16	3.53	9.00	255.0
	Peoria....Ill	New Orleans....La	9	50.66	5.63	20.40	362.3
	St. Louis....Mo	Atkins....Ark	27	84.12	3.11	10.60	340.8
	" "	Brinkley....Ark	27	68.16	2.52	9.20	365.1
	" "	Little Rock....Ark	20	52.49	2.62	9.60	366.4
	" "	Marianna....Ark	20	49.69	2.48	9.20	371.0
	" "	Texarkana....Ark	33	127.50	3.86	11.60	300.5
	" "	Shreveport....La	24	103.98	4.33	11.80	272.5
	Gramercy....La	Austin....Ind	40	256.36	6.41	13.20	205.9
	" "	Mt. Pleasant....Mich	30	286.48	9.55	14.00	146.6
	" "	Vincennes....Ind	45	281.16	6.25	9.20	147.2
	New Orleans....La	Miamisburg....Ohio	21	114.53	5.45	8.60	157.8
	" "	Austin....Ind	40	195.99	4.90	13.20	269.4
	" "	Chicago....Ill	16	94.67	5.93	8.20	138.3
	" "	" "	15	91.24	6.08	10.40	171.1
	" "	Seymour....Ind	40	200.55	5.01	13.20	263.5
	" "	Terre Haute....Ind	50	262.41	5.25	9.20	175.2
	Cincinnati....Ohio	Dallas....Tex	30	203.74	6.79	11.40	167.9
	Williamsport....Pa	Tulsa....Okla	26	238.61	9.18	31.40	342.0
	Wheeling....WVa	Seavey....Ark	12	71.65	5.97	22.60	378.6
	Toledo....Ohio	Little Rock....Ark	10	52.53	5.25	21.40	407.6
	Newell....WVa	Sweetwater....Tex	12	123.73	10.31	21.00	203.7
	Oil City....Pa	Henderson....Tex	40	357.83	8.94	20.80	232.7
	Saginaw....Mich	Monroe....La	14	130.39	9.31	22.80	244.9
	Springfield....Ohio	Arp....Tex	21	138.70	6.60	23.20	351.5
	Youngstown....Ohio	Gladwater....Tex	40	311.90	7.80	19.60	251.3
	"	Kilgore....Tex	40	312.13	7.80	19.60	251.3
	Austin....Ind	Pine Bluff....Ark	20	69.23	3.46	12.60	364.2
	"	Little Rock....Ark	20	71.14	3.56	12.00	337.1
	Gas City....Ind	" "	15	72.06	4.80	14.20	296.8
	Austin....Ind	Shreveport....La	22	105.27	4.78	14.20	297.1
	"	Ferriday....La	20	94.64	4.73	14.20	300.2
	"	Shreveport....La	21	100.44	4.78	14.20	297.1
	Waldron....Ind	Alexandria....La	19	105.31	5.54	15.40	278.0

EXHIBIT No.
Page 2

GRAPH OF PERCENTAGE RATIOS--RATE PER TON TO VIVIAN COSTS PER TON--
SHOWN ON PAGE 1